

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

December 14, 2009

Charles R. Fulbruge III
Clerk

No. 08-41224
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MICHAEL CHARLES MURRAY,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas, Beaumont Division
USDC No. 1:07-CR-232

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Michael Charles Murray has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Murray has filed a response. We note that after Murray filed his notice of appeal, the district court sua sponte amended its judgment pursuant to Fed. R. Crim. P. 35(b), reducing Murray's sentence from 262 months of imprisonment to 174. The district court, however, lacked jurisdiction to grant Rule 35(b) relief once Murray's notice of appeal had

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

been filed. *See United States v. Hayes*, 589 F.2d 811, 827 n. 8 (5th Cir.1979). The district court's AMENDED JUDGMENT is thus VOIDED, and the original judgment remains in effect for purposes of this appeal.

The record is insufficiently developed to allow consideration at this time of Murray's claim(s) of ineffective assistance of counsel; such claim(s) generally "cannot be resolved on direct appeal when [they have] not been raised before the district court since no opportunity existed to develop the record on the merits of the allegations." *United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006) (internal quotation marks and citation omitted). Our independent review of the record, counsel's brief, and Murray's response discloses no nonfrivolous issue for appeal. Accordingly, the motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. *See* 5th Cir. R. 42.2.